

AMENDED IN ASSEMBLY MARCH 25, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2676

Introduced by Assembly Member Rendon

February 21, 2014

An act to amend Sections 12463, 12463.3, 53890, 53895, and 53895.7 of, to amend, repeal and add Section 12464 of, ~~to add Article 6 (commencing with Section 12486) to Chapter 5 of Part 2 of Division 3 of Title 2 of,~~ and to repeal Section 53895.5 of, the Government Code, relating to state and local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2676, as amended, Rendon. Controller: reports.

(1) Existing law requires the Controller to annually compile and publish reports of the financial transactions of each county, city, and school district within the state, together with other matters he or she deems of public interest.

This bill would change the definition of a special district included in the reporting requirements of the Controller to include a public entity, agency, or board provided for by a joint powers agreement that is separate from the parties to the agreement and is responsible for the administration of the agreement.

(2) Existing law provides that if the county, city, or district reports, including redevelopment agency reports, are not made in a specified manner, or there is reason to believe that the report is false, the Controller is required to appoint a qualified accountant to make an investigation and to obtain the information required for the annual report of financial transactions. Existing law requires, if a similar investigation is made of any county, city, or district for 2 successive years, that a

copy of the results of those investigations be transmitted to the grand jury of the county investigated or in which the local agency investigated is situated. Existing law requires any costs incurred by the Controller in carrying out those audits to be paid by the local agency.

This bill would also, until January 1, 2020, authorize the Controller to perform an audit or investigation of any county, city, special district, or community redevelopment agency, if the Controller has made findings, supported by documentation, that the local agency is not complying with the financial requirements in state law, state grant agreements, local charters, or local ordinances, and require the Controller to prepare a report of the results of the audit or investigation and to file a copy with the local legislative body, as specified. This bill would require, if the results of those audits determine that the financial report filed by the local agency did not contain false, incomplete, or incorrect information, that the Controller waive the costs of the investigation, and would authorize the Controller to establish a payment program, as specified, to assist a local agency to pay for any costs that cannot be waived.

(3) Existing law provides that an officer of a local agency who fails or refuses to make and file his or her financial report within 20 days after receipt of a written notice of the failure from the Controller forfeits to the state a specified amount depending on the amount of total revenue of that local agency. Existing law raises these amounts in the case of a community redevelopment agency and a joint powers agency that issues conduit revenue bonds in the 2nd and 3rd consecutive year.

This bill would raise the forfeiture amounts for all local agencies, as specified. The bill would double these fines if the agency fails to submit the report to the Controller for 2 consecutive years, and would triple the fines if the agency fails to submit the report to the Controller for 3 consecutive years. This bill would increase penalties for an agency that fails to submit a report, as specified.

This bill would also make technical nonsubstantive, and conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12463 of the Government Code is
2 amended to read:

1 12463. (a) The Controller shall compile and publish reports
2 of the financial transactions of each county, city, and special
3 district, respectively, within this state, together with any other
4 matter he or she deems of public interest. The reports shall include
5 the appropriations limits and the total annual appropriations subject
6 to limitation of the counties, cities, and special districts. The reports
7 to the Controller shall be made in the time, form, and manner
8 prescribed by the Controller.

9 (b) Effective January 1, 2005, the Controller shall compile and
10 publish reports of the financial transactions of each county, city,
11 and special district pursuant to subdivision (a) on or before August
12 1, September 1, and October 1 respectively, of each year following
13 the end of the annual reporting period. The Controller shall make
14 data collected pursuant to this subdivision available upon request
15 to the Legislature and its agents, on or before April 1 of each year.

16 (c) The Controller shall annually publish, on the Internet Web
17 site of the Controller, reports of the financial transactions of each
18 school district within this state, together with any other matter he
19 or she deems of public interest. The reports shall include the
20 appropriations limit and the total annual appropriations subject to
21 limitation of the school district. The reports to the Controller shall
22 be made in the time, form, and manner prescribed by the Controller.

23 (d) As used in this section, the following terms have the
24 following meanings:

25 (1) "School district" means a school district as defined in Section
26 80 of the Education Code.

27 (2) "Special district" means any of the following:

28 (A) A special district as defined in Section 95 of the Revenue
29 and Taxation Code.

30 (B) A public entity, agency, commission, or board provided for
31 by a joint powers agreement pursuant to Chapter 5 (commencing
32 with Section 6500) of Division 7 of Title 1 that is separate from
33 the parties to the agreement.

34 (C) A nonprofit corporation that is any of the following:

35 (i) Was formed in accordance with the provisions of a joint
36 powers agreement to carry out functions specified in the agreement.

37 (ii) Issued bonds, the interest on which is exempt from federal
38 income taxes, for the purpose of purchasing land as a site for, or
39 purchasing or constructing, a building, stadium, or other facility,
40 that is subject to a lease or agreement with a local public entity.

1 (iii) Is wholly owned by a public agency.

2 SEC. 2. Section 12463.3 of the Government Code is amended
3 to read:

4 12463.3. On or before May 1 of each year, the Controller shall
5 compile and publish annually reports of the financial transactions
6 of each agency created pursuant to Division 24 (commencing with
7 Section 33000) of the Health and Safety Code. The Controller
8 shall make the data available to the Legislature and its agents upon
9 request, on or before April 1 of each year. The Controller shall
10 publish this information for each project area of each agency. The
11 reports shall be made in the time, form, and manner prescribed by
12 the Controller, after consultation with the Department of Housing
13 and Community Development and the advisory committee created
14 pursuant to Section 12463.1.

15 SEC. 3. Section 12464 of the Government Code is amended
16 to read:

17 12464. (a) If the reports of a county, city, special district, or
18 agency, created pursuant to Division 24 (commencing with Section
19 33000) of the Health and Safety Code are not made in the time,
20 form, and manner required or there is reason to believe that a report
21 is false, incomplete, or incorrect, the Controller shall appoint a
22 qualified accountant to make an investigation and to obtain the
23 information required. The accountant appointed shall report to the
24 Controller the results of investigation, and a copy shall be filed
25 with the legislative body of the county, city, special district, or
26 agency, the accounts of which were investigated. If a similar
27 investigation has to be made of the accounts of any county, city,
28 special district, or agency, for two successive years, a certified
29 copy of the results of the investigation last made shall be
30 transmitted to the grand jury of the county that was investigated
31 or in which the city, special district, or agency investigated is
32 situated, or, if the special district or agency is situated in more than
33 one county, in the county in which any portion of the special
34 district or agency is situated.

35 (b) (1) If the Controller has made findings pursuant to
36 subdivision (c) that a county, city, or special district is not
37 complying with the financial requirements in state law, state grant
38 agreements, local charters, or local ordinances, he or she may audit
39 or investigate the issue if he or she determines that sufficient funds
40 exist within his or her budget to conduct the audit or investigation.

1 (2) The Controller shall prepare a report of the results of the
2 audit or investigation that shall include detailed documentation of
3 the material basis for the findings included in the audit or
4 investigation. A copy of the report shall be filed with the legislative
5 body of the city, county, or special district subject to the audit or
6 investigation. A finding of illegal acts or fraud shall be
7 communicated to the appropriate authorities, including the county
8 grand jury.

9 (c) (1) Prior to an audit or investigation being conducted
10 pursuant to subdivision (b), the Controller, after consultation with
11 the local agency, shall make written findings that explain the legal
12 and factual basis supporting the decision to conduct the audit or
13 investigation and the Controller shall give the local agency a
14 reasonable opportunity to respond to these findings.

15 (2) (A) In cases in which the Controller seeks to audit or
16 investigate compliance with the financial requirements in local
17 charters or local ordinances, the Controller shall first share with
18 the local agency documentation of evidence relied upon in
19 determining the need for the audit or investigation and provide the
20 local agency the opportunity to conduct its own audit or
21 investigation of the matter in a reasonable period of time. If the
22 local agency elects to conduct an audit or investigation, the local
23 agency shall provide the results to the Controller promptly upon
24 completion. If the Controller subsequently proceeds with his or
25 her own audit or investigation, he or she shall make specific written
26 findings concerning the evidence relied upon in determining the
27 need for the audit or investigation and confirming that each issue
28 to be audited or investigated has not been or is not likely to be
29 addressed by local means, which may include, but are not limited
30 to, a grand jury or district attorney.

31 (B) The Controller shall not audit or investigate compliance
32 with the financial requirements in local charters or local ordinances
33 if the matter involves a pending policy or administrative decision,
34 such as adoption of a budget, negotiations of labor or other
35 contracts, or a pending decision on an unpaid claim. The Controller
36 shall not audit or investigate the matter until a final decision has
37 been adopted by the local agency.

38 (C) The Controller shall not audit or investigate compliance
39 with the financial requirements of local charters or local ordinances
40 if the matter is the subject of actual or completed litigation.

(3) For purposes of this subdivision, documentation means a writing, photograph, photostat, email or facsimile transmission, or any other means of recording upon a tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, or a record thereby created, regardless of the manner in which the record has been stored.

(4) The Controller shall not initiate or conduct an audit or investigation pursuant to subdivision (b) or (c) of a local agency that falls within the date the local agency has initiated the neutral evaluation process, pursuant to Article 5 (commencing with Section 53760) of Chapter 4 of Part 1 of Division 2 of Title 5, and the date that process has been completed.

(d) (1) Any costs incurred by the Controller pursuant to subdivision (a), including contracts with, or employment of, certified public accountants or public accountants, in compiling a financial report pursuant to Section 12463 or 12463.3 shall be borne by the county, city, special district, or agency and shall be a charge against any unencumbered funds of the county, city, special district, or agency. Any forfeiture imposed by Section 53895 may be offset up to the total costs incurred by the Controller. Any remaining balance shall be forfeited in accordance with Sections 53895 and 53895.7. Any costs incurred by the Controller in excess of the forfeiture imposed shall be a charge against any unencumbered funds of the county, city, special district, or agency.

(2) If an investigation conducted pursuant to subdivision (a) determines that the financial report filed by the county, city, or special district did not contain materially false, incomplete, or incorrect information, the Controller shall waive the costs of the investigation. The Controller may establish a payment program, with interest, for up to five years to assist a local agency to pay for the costs that cannot be waived.

(e) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

SEC. 4. Section 12464 is added to the Government Code, to read:

12464. (a) If the reports of the county, city, special district, or agency created pursuant to Division 24 (commencing with Section 33000) of the Health and Safety Code are not made in the time,

1 form, and manner required or there is reason to believe that a report
2 is false, incomplete, or incorrect, the Controller shall appoint a
3 qualified accountant to make an investigation and to obtain the
4 information required. The accountant appointed shall report to the
5 Controller the results of the investigation, and a copy shall be filed
6 with the legislative body of the county, city, special district, or
7 agency the accounts of which were investigated. If a similar
8 investigation has to be made of the accounts of any county, city,
9 special district, or agency for two successive years, a certified copy
10 of the results of the investigation last made shall be transmitted to
11 the grand jury of the county that was investigated or in which the
12 city, special district, or agency investigated is situated, or, if the
13 special district or agency is situated in more than one county, in
14 the county in which any portion of the special district or agency
15 is situated.

16 (b) Any costs incurred by the Controller pursuant to subdivision
17 (a), including contracts with, or employment of, certified public
18 accountants or public accountants, in compiling a financial report
19 pursuant to Section 12463 or 12463.3 shall be borne by the county,
20 city, special district, or agency and shall be a charge against any
21 unencumbered funds of the county, city, special district, or agency.
22 Any forfeiture imposed by Section 53895 may be offset up to the
23 total costs incurred by the Controller. Any remaining balance shall
24 be forfeited in accordance with Sections 53895 and 53895.7. Any
25 costs incurred by the Controller in excess of the forfeiture imposed
26 shall be a charge against any unencumbered funds of the county,
27 city, special district, or agency.

28 (c) This section shall become operative on January 1, 2020.

29 ~~SEC. 5. Article 6 (commencing with Section 12486) is added~~
30 ~~to Chapter 5 of Part 2 of Division 3 of Title 2 of the Government~~
31 ~~Code, to read:~~

32
33 ~~Article 6. Voluntary Local Agency Financial Review~~
34

35 ~~12486. (a) At the written request of the governing body, chief~~
36 ~~administrative officer, or chief executive of a local agency, the~~
37 ~~Controller may convene a local agency financial review committee~~
38 ~~to provide assistance to the local agency in reviewing and assessing~~
39 ~~its financial condition and related internal controls to avert or~~
40 ~~manage a serious financial problem.~~

~~(b) The request shall include a description of the factors that warrant the need for review and assessment.~~

~~(c) The local agency shall reimburse the Controller for any costs incurred by the Controller in conducting a review pursuant to this section. The Controller may establish a payment program for up to five years, with interest.~~

~~(d) A local agency financial review committee shall be chaired by the Controller and both state and local government representatives selected by the Controller. The Controller shall allow at least two local government representatives to serve on the committee, selected as follows:~~

~~(1) If the local agency is a city, representatives selected by the League of California Cities.~~

~~(2) If the local agency is a county, representatives selected by the California State Association of Counties.~~

~~(3) If the local agency is a special district, representatives selected by the California Special Districts Association.~~

~~(e) The Controller shall use the services of a consultant that has extensive financial management and accounting experience with local agencies in the state to assist the local agency financial review committee in evaluating and assisting the local agency.~~

~~(f) In consultation with the local agency requesting assistance, the local agency financial review committee shall provide a written report to the local agency, which may include its recommendations and an assessment of the local agency's financial practices and conditions and internal controls related to its financial condition.~~

~~(g) Assistance provided pursuant to this section shall not include direct financial payments or loans to local agencies that are not otherwise authorized by statute.~~

~~(h) If the local agency notifies the Controller that it has initiated the neutral evaluation process pursuant to Article 5 (commencing with Section 53760) of Chapter 4 of Part 1 of Division 2 of Title 5, the Controller shall suspend all activities under this section, unless the local agency requests that the activities be continued. The local agency shall be liable for costs under subdivision (c).~~

~~12487. For purposes of this article, "local agency" means a city, county, city and county, or special district.~~

~~SEC. 6.~~

~~SEC. 5.~~ Section 53890 of the Government Code is amended to read:

1 53890. As used in this article, “local agency” means any city,
2 county, special district, and agency, created pursuant to Division
3 24 (commencing with Section 33000) of the Health and Safety
4 Code, required to furnish financial reports pursuant to Section
5 12463 or 12463.3.

6 ~~SEC. 7.~~

7 SEC. 6. Section 53895 of the Government Code is amended
8 to read:

9 53895. (a) An officer of a local agency to which Section
10 53895.7 does not apply who fails or refuses to make and file his
11 or her report within 20 days after receipt of a written notice of the
12 failure from the Controller shall forfeit to the state:

13 (1) Two thousand five hundred dollars (\$2,500), in the case of
14 a local agency with total revenue, in the prior year, of less than
15 one hundred thousand dollars (\$100,000), as reported in the
16 Controller’s annual financial reports.

17 (2) Five thousand five hundred dollars (\$5,500) in the case of
18 a local agency with total revenue, in the prior year, of at least one
19 hundred thousand dollars (\$100,000) but less than two hundred
20 fifty thousand dollars (\$250,000), as reported in the Controller’s
21 annual financial reports.

22 (3) Ten thousand dollars (\$10,000) in the case of a local agency
23 with total revenue, in the prior year, of at least two hundred fifty
24 thousand dollars (\$250,000), as reported in the Controller’s annual
25 financial reports.

26 (b) If an officer of a local agency fails or refuses to make and
27 file his or her report within 20 days after receipt of a written notice
28 pursuant to subdivision (a) for two consecutive years, the forfeiture
29 pursuant to paragraph (1), (2), or (3) of subdivision (a) shall be
30 doubled.

31 (c) If an officer of a local agency fails or refuses to make and
32 file his or her report within 20 days after receipt of a written notice
33 pursuant to subdivision (a) for three or more consecutive years,
34 the forfeiture pursuant to paragraph (1), (2), or (3) of subdivision
35 (a) shall be tripled.

36 (d) Notwithstanding any amount forfeited pursuant to
37 subdivision (a), (b), or (c), the agency shall be required to file the
38 report pursuant to Section 53891.

1 (e) (1) Upon the request of the Controller, the Attorney General
2 shall prosecute an action for the forfeiture in the name of the people
3 of the State of California.

4 (2) Upon satisfactory showing of good cause to the Controller,
5 the forfeiture provided in this section shall not be imposed.

6 ~~SEC. 8.~~

7 *SEC. 7.* Section 53895.5 of the Government Code is repealed.

8 ~~SEC. 9.~~

9 *SEC. 8.* Section 53895.7 of the Government Code is amended
10 to read:

11 53895.7. (a) For the purpose of this section, “agency” means
12 any agency or entity formed pursuant to the Joint Exercise of
13 Powers Act (Article 1 (commencing with Section 6500) of Chapter
14 5 of Division 7 of Title 1) that issues conduit revenue bonds.

15 (b) An officer of an agency who fails or refuses to make and
16 file his or her report pursuant to this article within 20 days after
17 receipt of a written notice of the failure from the Controller shall
18 forfeit to the state:

19 (1) Two thousand five hundred dollars (\$2,500) in the case of
20 an agency with total revenue, in the prior year, of less than one
21 hundred thousand dollars (\$100,000), as reported in the Controller’s
22 annual financial reports.

23 (2) Five thousand five hundred dollars (\$5,500) in the case of
24 an agency with total revenue, in the prior year, of at least one
25 hundred thousand dollars (\$100,000), but less than two hundred
26 fifty thousand dollars (\$250,000), as reported in the Controller’s
27 annual financial reports.

28 (3) Ten thousand dollars (\$10,000) in the case of an agency
29 with total revenue, in the prior year, of at least two hundred fifty
30 thousand dollars (\$250,000), as reported in the Controller’s annual
31 financial reports.

32 (c) An officer of an agency who fails or refuses to make and
33 file his or her report within 20 days after receipt of a written notice
34 of the failure from the Controller in the second consecutive year
35 shall forfeit to the state:

36 (1) Five thousand dollars (\$5,000) in the case of an agency with
37 total revenue, in the prior year, of less than one hundred thousand
38 dollars (\$100,000), as reported in the Controller’s annual financial
39 reports.

1 (2) Eleven thousand dollars (\$11,000) in the case of an agency
2 with total revenue, in the prior year, of at least one hundred
3 thousand dollars (\$100,000), but less than two hundred fifty
4 thousand dollars (\$250,000), as reported in the Controller's annual
5 financial reports.

6 (3) Twenty thousand dollars (\$20,000) in the case of an agency
7 with total revenue, in the prior year, of at least two hundred fifty
8 thousand dollars (\$250,000), as reported in the Controller's annual
9 financial reports.

10 (d) In the case of an agency that fails or refuses to make and
11 file its report within 20 days after receipt of a written notice of the
12 failure from the Controller for three or more consecutive years,
13 the forfeiture pursuant to paragraph (1), (2), or (3) of subdivision
14 (b) shall be tripled. The Controller shall conduct, or cause to be
15 conducted, an independent financial audit report consistent with
16 the requirements of Section 6505. The agency shall reimburse the
17 Controller for the cost of complying with this subdivision.

18 (e) (1) Upon the request of the Controller, the Attorney General
19 shall prosecute an action for the forfeiture in the name of the people
20 of the State of California.

21 (2) Upon a satisfactory showing of good cause to the Controller,
22 the forfeiture provided in this section shall not be imposed.

23 (f) Notwithstanding any amount forfeited pursuant to subdivision
24 (a), (b), (c), or (d) the agency shall be required to file the report
25 required pursuant to Section 53891.